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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JUNE 22, 1999

PETITION OF

STARPOWER COMMUNICATIONS, LLC

CASE NO. PUC990023

For Declaratory Judgment
Interpreting Interconnection
Agreement with GTE South, Inc.

and

PETITION OF

COX VIRGINIA TELECOM, INC.

v.

CASE NO. PUC990046

GTE SOUTH, INC.

For enforcement of interconnection
agreement for reciprocal compensation
for the termination of local calls
to Internet Service Providers

PRELIMINARY ORDER

The Commission issues this Preliminary Order in the above-captioned cases, while reserving judgment on whether these cases should be consolidated.

Petition of Starpower

On February 4, 1999, Starpower Communications, LLC ("Starpower") filed a petition for declaratory judgment against GTE South Incorporated ("GTE") seeking enforcement of a certain Interim Interconnection Agreement between Starpower and GTE

("Starpower Agreement"), which is based upon Starpower's adoption, pursuant to § 252(i) of the Telecommunications Act of 1996 ("the Act"), of an interconnection agreement between GTE and MFS Intelenet of Virginia ("MFS").¹

On April 24, 1998, GTE filed copies of Starpower's adoption of the interconnection agreement between GTE and MFS. GTE's cover letter stated that the filing was made under § 251(i) of the Act and that "GTE is not voluntarily entering the agreement with Starpower and does not waive any rights and remedies it has concerning its position as to the illegality or unreasonableness of the [adopted] MFS Agreement's terms."²

Starpower states that GTE has taken the position that it will not make payments to Starpower for reciprocal compensation for the transport and termination of telephone exchange service traffic handed off by GTE to Starpower for termination by Starpower to its exchange service end users that are Internet Service Providers or Enhanced Service Providers (collectively "ISPs"). Starpower relies upon the adopted agreement's requirement that the parties will pay such compensation for the

¹ The interconnection agreement by and between GTE and MFS Intelenet of Virginia, Inc. was approved by this Commission in an Order Approving Agreement, Case No. PUC970007, issued July 9, 1997.

² The Commission took no action on this filing. However, on May 21, 1998, the Director of the Division of Communications sent a letter to GTE advising that no action would be taken "as the parties apparently do not consider it to be an interconnection agreement adopted by either negotiation or arbitration which requires approval under Section 252(e) of the Act."

transport and termination of "Local Traffic." Starpower requests that the Commission enter an order affirming an earlier Commission decision³ that calls to ISPs are local for purposes of reciprocal compensation.

We conclude that MFS should be made a party in this proceeding, as it concerns the interpretation of its interconnection agreement with GTE.

Petition of Cox

On March 18, 1999, Cox Virginia Telecom, Inc. ("Cox") filed a petition requesting enforcement of an arbitrated interconnection agreement with GTE ("Cox Agreement") which the parties entered into under §§ 251 and 252 of the Act and which this Commission approved.⁴ Specifically, Cox seeks a declaratory order that local calls to ISPs constitute "Local Traffic" under the terms of the Cox Agreement and that reciprocal compensation is due for such calls. Cox further seeks this Commission's enforcement of the reciprocal compensation obligations for ISP-bound traffic under the Cox Agreement.

NOW THE COMMISSION, upon consideration of both of the above-captioned matters, is of the opinion that both petitions should be docketed and that GTE shall be made a Defendant party

³ Petition of Cox Virginia Telecom, Inc., Case No. PUC970069, 1997 SCC Ann. Rep. 298 (Oct. 24, 1997).

⁴ Case No. PUC960118, Orders issued May 1, 1997, and May 30, 1997.

in these two proceedings pursuant to Rule 4:5 of the Commission's Rules of Practice and Procedure. We direct GTE to file responsive pleadings in both cases. In addition, Starpower and Cox may file their replies thereto.

GTE is requested to address in its responsive pleading how the Federal Communications Commission's ("FCC's") February 26, 1999, ruling on reciprocal compensation⁵ may affect the duties of reciprocal compensation addressed in these petitions and this Commission's subject matter jurisdiction.

The filings by all parties should include their respective comments on whether or not these proceedings should be consolidated to expedite this Commission's consideration of the issues of law and fact raised.

The Commission is of the opinion that other parties may have an interest in the outcome of these proceedings. Therefore, we will also permit interested parties to file comments when the replies of Starpower and Cox are due. Accordingly,

IT IS THEREFORE ORDERED THAT:

(1) The Petition of Starpower is docketed and assigned Case No. PUC990023.

⁵ In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 and Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68 (Feb. 26, 1999).

(2) The Petition of Cox is docketed and assigned Case No. PUC990046.

(3) On or before July 7, 1999, GTE shall file its separate responses to the petitions of Starpower and Cox as provided above. GTE's responses shall address how the FCC's February 26, 1999, ruling on reciprocal compensation may affect the duties of reciprocal compensation addressed in the petitions and this Commission's subject matter jurisdiction. Further, GTE may file comments regarding whether Case No. PUC990023 and Case No. PUC990046 should be consolidated.

(4) On or before July 19, 1999, Starpower and Cox shall file their respective reply to GTE and may include comments on whether Case No. PUC990023 and Case No. PUC990046 should be consolidated.

(5) Any interested party may file comments on or before July 19, 1999, consistent with the findings above.

(6) The above-captioned matters are continued generally.